

DELOIS ANN WEST
Claimant

AND Respondent

Insurance Carrier

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ORDER

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of her employment with respondent.
- (2) Whether certain defenses apply.
- (3) Whether the Administrative Law Judge exceeded his jurisdiction in granting the relief requested at preliminary hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidence in the record, the Appeals Board, for preliminary hearing purposes, makes the following findings of fact and conclusions of law:

Claimant alleges that on December 16, 1996, while shoveling metal shavings, she felt a pop in her right wrist and suffered an immediate onset of pain. Claimant further alleges she advised her coworker of the incident, paged claimant's supervisor, Merlyn Wetzel, and informed Mr. Wetzel of the problem. Respondent contends claimant did not advise Mr. Wetzel of the injury but instead got into an argument regarding claimant's "shorting" hours, i.e. not working as many hours as she was supposed to on the previous Friday. Respondent further contends claimant used abusive language towards Mr. Wetzel and, as a result, was provided two written reprimands, one for failing to properly clean a restroom and one for the improper and abusive language. On the following day, December 18, 1996, Mr. Wetzel and claimant again had a work discussion which resulted in claimant's termination. Claimant was working for respondent part-time at the time of the alleged injury but worked full-time for Dillards loading and unloading 25 to 30 pound boxes. Claimant acknowledged that her right hand complaints worsened after the alleged accident with respondent and that the increased activity at Dillards caused her right hand to swell.

Respondent contends claimant did not suffer accidental injury as alleged and that the allegations by claimant were in response to the reprimands presented to claimant by Mr. Wetzel. However, as Mr. Wetzel did not testify, claimant's version of how the accident occurred and of her conversation between she and Mr. Wetzel is uncontradicted. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146(1976).

The burden of proof is upon claimant to establish her right to benefits by a preponderance of the credible evidence. K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g). While respondent contends there are numerous inconsistencies in claimant's story it is nevertheless the only story the Appeals Board has to consider at this time.

It is significant that the Administrative Law Judge had the opportunity to view claimant's testimony in person and to develop an opinion regarding the claimant's credibility. This ability to view live witness testimony is an advantage the Administrative Law Judges have over the Appeals Board. As such, the Appeals Board will usually defer to the opinion of Administrative Law Judges when the credibility of any witness or claimant is a significant factor in the outcome of litigation. In this instance, the Appeals Board finds the evidence sufficient to show claimant suffered accidental injury arising out of and in the course of her employment with respondent on the date alleged.

In granting the medical relief requested the Administrative Law Judge did not exceed his jurisdiction. Neither K.S.A. 1996 Supp. 44-534a nor K.S.A. 1996 Supp. 44-551 grant Appeals Board jurisdiction over this issue.

Respondent further alleges certain defenses apply. The only specific issues raised by respondent deal with whether or not claimant suffered accidental injury or whether she had an intervening injury while working for Dillards. As the Appeals Board has found that the evidence is not sufficient to find in respondent's favor on either of these issues, respondent's allegation that certain defenses apply has no merit.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated June 16, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

c: R. J. Kleinherenbrink, Hutchinson, KS
Vincent A. Burnett, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director